

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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CC:CORP:3

PLR-140488-09

Date:

October 02, 2009

Legend

Parent =

Sub 1 =

Sub 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated August 28, 2009, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. Parent is requesting an extension of time for Parent and the members of its affiliated group to make an election under §1.1502-75(a)(1) to file a consolidated Federal income tax return for the taxable year ended Date 3 (the "Election"). The material information is summarized below.

Parent was formed on Date 1. On the same date, Parent formed MergerSub for the purposes of acquiring Sub 1. On Date 2, MergerSub merged into Sub 1 in a transaction that did not constitute a reverse acquisition within the meaning of §1.1502-75(d)(3). As a result of the merger, Sub 1 became a wholly owned subsidiary of Parent and a member of its affiliated group.

Parent and the members of its affiliated group intended to file a consolidated Federal income tax return for Parent group's tax year ending Date 3. The Election was due on Date 4 but for various reasons the Election was not timely filed. Subsequently, this request was submitted, under §301.9100-3, for an extension of time to file the Election. Prior to the submission of this request, Parent group filed a consolidated Federal income tax return for it and the members of its affiliated group. The period of limitations on assessment under §6501(a) has not expired for Parent or any member of its affiliated group for the tax year ending Date 3.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under §1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., §1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent to file the Election, provided Parent establishes that it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that Parent reasonably relied on a qualified tax professional who failed to make, or advise Parent to make, the Election, and that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §§301.9100-3(b)(1)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that Parent has shown it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, provided Parent Group qualifies substantively to file a consolidated return for the applicable tax year, an extension of time is granted under §301.9100-3, until 45 days from the date on this letter, for Parent to file the Election. Parent, having already filed the consolidated return, must, within 45 days from the date on this letter amend its return by attaching a copy of this letter to such return. Alternatively, if Parent Group files its return electronically, Parent Group may satisfy this requirement by attaching a statement to the return that provides the date and control number of this ruling letter.

The above extension of time is conditioned on Parent Group's tax liability (if any) being not lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made by the applicable Director's office upon audit of the Federal income tax returns involved. Further, no opinion is expressed as to the Federal income tax effect, if any, if it is determined that the taxpayers' tax liability is lower. Section 301.9100-3(c).

We express no opinion as to whether Parent Group qualifies substantively to file a consolidated return. In addition, we express no opinion as to the tax consequences of filing the return or the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the return and the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by the taxpayers. However, the Director should verify all essential facts. In addition, notwithstanding that an extension is

granted under §301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer(s) who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc :